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ATTORNEYS FOR PLAINTIFF  
 RICHARD NOLL

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

RICHARD NOLL, Individually and on )  
 behalf of all others similarly situated, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 EBAY INC., )  
 )  
 Defendant. )  
 )

CASE NO. 5:11-CV-04585-EJD

**STIPULATION AND ~~PROPOSED~~  
 ORDER REGARDING DISMISSAL OF  
 RELATED CASE**

Judge: Hon. Edward J. Davila  
 Courtroom: 4, 5<sup>th</sup> Floor  
 Trial Date: Not yet set

This Stipulation is entered into pursuant to Local Rule 7-12, by and between Plaintiffs  
 Richard Noll (“Noll”) and Rhythm Motor Sports, LLC (“Rhythm”) and Defendant eBay Inc.  
 (“eBay”) (collectively, the “Parties”), by and through the respective undersigned counsel.

1 WHEREAS, on July 10, 2012, Rhythm filed its Notice of Motion and Motion to  
2 Intervene, for Joinder and/or for Substitution *Pro Tanto* (“Motion to Intervene”) [Doc. No. 69]  
3 and simultaneously filed a separate lawsuit against eBay styled *Rhythm Motor Sports, LLC v.*  
4 *eBay Inc.*, Cause No. CV12-03601 PJH, in the United States District Court for the Northern  
5 District of California (the “Separate Rhythm Lawsuit”);

6  
7 WHEREAS, on September 4, 2012, the Court entered an Order [Doc. No. 83] granting  
8 the Motion to Intervene;

9 WHEREAS, on September 18, 2012, Rhythm filed its Original Class Action Complaint  
10 in Intervention herein asserting the same claims that Rhythm has asserted in the Separate  
11 Rhythm Lawsuit;

12 WHEREAS, the Parties agree that, for purposes of judicial economy and efficiency,  
13 Rhythm’s claims should be litigated in this Action, rather than the Separate Rhythm Lawsuit;

14  
15 WHEREAS, although the Parties disagree as to whether Rhythm’s claims and the claims  
16 of the class it proposes to represent relate back to a date prior to July 10, 2012, for purposes of  
17 the applicable statutes of limitations, the Parties nevertheless agree that all applicable statutes of  
18 limitations governing such claims were fully and properly tolled as of the filing of the Separate  
19 Rhythm Lawsuit on July 10, 2012;

20  
21 WHEREAS, the Parties agree that if Rhythm voluntarily dismisses the Separate Rhythm  
22 Lawsuit, Rhythm’s ability to pursue its claims in this case should be the same as if it were  
23 asserting those claims within the Separate Rhythm Lawsuit and that the statutes of limitations  
24 governing Rhythm’s claims and the claims of the class asserted herein should therefore be  
25 deemed to have been tolled effective no later than July 10, 2012;

1 WHEREAS, in order to facilitate the dismissal of the Separate Rhythm Lawsuit, the  
 2 Parties wish to set forth their agreement regarding the applicability of any statute of limitations  
 3 defenses to Rhythm's claims:

4 NOW THEREFORE, for purposes of any statute of limitations defense that may be  
 5 asserted with respect to the claims asserted by Rhythm or the class it proposes to represent  
 6 herein, the Parties agree and request that the Court enter an order that the running of any  
 7 applicable statute of limitations shall be considered tolled as of no later than July 10, 2012. This  
 8 stipulation is without prejudice to the Parties' respective positions regarding whether the statutes  
 9 of limitations governing Rhythm's claims were tolled prior to July 10, 2012, or whether the  
 10 assertion of Rhythm's claims relates back to a date prior to July 10, 2012, and the Parties  
 11 expressly reserve their rights regarding such issues. Any issues regarding the tolling of  
 12 limitations or the relation back of Rhythm's claims prior to July 10, 2012, shall be subsequently  
 13 presented to the Court by the Parties when such a determination becomes necessary and  
 14 appropriate.  
 15  
 16 appropriate.

17 IT IS SO STIPULATED.  
 18

19 Dated: September 20, 2012.

FIGARI & DAVENPORT, LLP

20 /s/ Keith R. Verges

Keith R. Verges

*Attorneys for Plaintiff RICHARD NOLL*

23 Dated: September 20, 2012.

COOLEY LLP

24 /s/ Whitty Somvichian

Whitty Somvichian

*Attorneys for Defendant EBAY INC.*

Additional attorneys:

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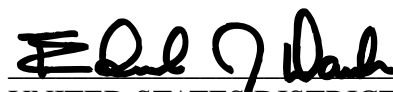
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PURSUANT TO STIPULATION IT IS SO ORDERED:

Dated: 9/24/2012



UNITED STATES DISTRICT JUDGE

1 **FILER'S ATTESTATION:**

2 Pursuant to General Order No. 45, 5X(B) regarding signatures, I attest under penalty of  
3 perjury that the concurrence in the filing of this document has been obtained from its signatories.

4 /s/ Keith R. Verges

5 Keith R. Verges

6 *Attorneys for Plaintiffs RICHARD NOLL and*  
7 *RHYTHM MOTOR SPORTS LLC*

8 **CERTIFICATE OF SERVICE**

9 I hereby certify that all counsel of record will be served with a copy of this document via  
10 the Court's CM/ECF system pursuant to the local rules of this Court on this 20<sup>th</sup> day of  
11 September, 2012.

12 /s/ Keith R. Verges

13 Keith R. Verges

14 *Attorneys for Plaintiffs RICHARD NOLL and*  
15 *RHYTHM MOTOR SPORTS, LLC*